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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/049,876      | 06/07/2002  | William F. Aftoora   | WFA-1400            | 6290             |

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EXAMINER

BECKER, DREW E

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/049,876

Applicant(s)

AFTOORA, WILLIAM F.

Examiner

Drew E. Becker

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

- 6) ☒ Claim(s) 1-32 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.

- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to: See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some \* c) ☐ None of:

- 1) ☐ Certified copies of the priority documents have been received.

- 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

- 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage

application from the International Bureau (PCT Rule 17.2(a)).

- 4) ☒ See the attached detailed Office action for a list of the certified copies not received.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)

- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)

Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)

Paper No(s)/Mail Date \_\_\_\_\_

- 5) ☒ Notice of Informal Patent Application (PTO-152)

- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 16 recite a "gelled edible starchy material". However, the term "gelled edible starchy material" does not appear to be disclosed in the application.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless—  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/29894. WO 96/29894 teaches a solid food product (page 8, line 25) comprising 5-80% of an edible fat (page 2, line 15), 1-20% starch (page 2, line 18), up to 40% water, taste, and

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

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flavor compounds (page 2, line 20), 0.5-15% milk ingredients (page 2, line 17), 0.25-5% gelatin (page 2, line 22), 10-35% water (page 4, line 22), the flavors including salt, spices, wine, bouillon, onions, garlic, cheese, and tomatoes (page 4, line 26 to page 5, line 16), maize starch (page 6, line 25), hydrocolloids such as carrageenan, agar, xanthan, and pectin (page 6, line 34), butter (page 2, line 27), modified starch (page 7, line 24), margarine (page 8, line 34), preservatives such as potassium sorbate (page 9, line 28), the starch being gelled during preparation by being heated to 70-100°C (page 8, line 11), and that the food may also possess a spoonable, mousse-like structure

(page 9, lines 1-10). Regarding claims 5-6 and 12-13, these claim do not positively indicate that, "seafood flavoring" for instance, is the chosen flavor.

flavor compounds (page 2, line 20), 0.5-15% milk ingredients (page 2, line 17), 0.25-5% gelatin (page 2, line 22), 10-35% water (page 4, line 22), the flavors including salt, spices, wine, bouillon, onions, garlic, cheese, and tomatoes (page 4, line 26 to page 5, line 16), maize starch (page 6, line 25), hydrocolloids such as carrageenan, agar, xanthan, and pectin (page 6, line 34), butter (page 2, line 27), modified starch (page 7, line 24), margarine (page 8, line 34), preservatives such as potassium sorbate (page 9, line 28), the starch being gelled during preparation by being heated to 70-100°C (page 8, line 11), and that the food may also possess a spoonable, mousse-like structure

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/29894 as applied above, in view of Gimelli et al [Pat. No. 6,596,336].

WO 96/29894 teaches the above mentioned components as well as the addition of carbon dioxide (page 9, lines 1-9). WO 96/29894 does not recite the use of sodium

bicarbonate. Gimelli et al teach a seasoning mix comprising sodium bicarbonate which provided beneficial PH buffering and thereby controlled the palatability of the sauce

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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(column 3, lines 24-45). It would have been obvious to one of ordinary skill in the art to incorporate the sodium bicarbonate of Gimelli et al into the invention of WO 96/29894 since both are directed sauce products, since WO 96/29894 already included the addition of carbon dioxide (page 9, lines 1-9) but simply does not explain how it was achieved, since WO 96/29894 already included acidic ingredients such as wine and citric acid (page 4, lines 26-36), since sodium bicarbonate was well known to produce carbon dioxide in foods, and since Gimelli et al teach that sodium bicarbonate was also an effective PH buffer in sauces in order to provide a neutralized pH of 4-7 (column 3,

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### **Response to Arguments**

7. Applicant's arguments filed January 3, 2006 have been fully considered but they are not persuasive.

Applicant argues that WO 96/29894 does not teach a gelled starch. However, WO 96/29894 clearly teaches that the starch is heated at 70-100°C during the mixing step (page 8, line 12) which would provide gelation. Regarding page 6 of WO 96/29894, this page merely discloses that the starch should not be a pre-gelatinized starch. It does not exclude gelatinization during the preparation of the food product.

Applicant argues that WO 96/29894 did not teach a solid food product. However, WO 96/29894 clearly teaches that the food product can be in the form of a dry powder

(page 8, line 25) and that the food may also possess a spoonable, mousse-like

7. Applicant's arguments filed January 3, 2006 have been fully considered but they are not persuasive.

Applicant argues that WO 96/29894 does not teach a gelled starch. However,

WO 96/29894 clearly teaches that the starch is heated at 70-100°C during the mixing

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In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, WO 96/29894 is directed to a food product which can be prepared to resemble mousse in structure by the addition of gases such as carbon dioxide (page 9, lines 1-10). WO 96/29894 does not provide any specific examples of how to achieve this gas incorporation. Gimelli et al

is directed to a food product comprising sodium bicarbonate which provided beneficial PH buffering and thereby controlled the palatability of the sauce (column 3, lines 24-45). It would have been obvious to one of ordinary skill in the art to incorporate the sodium bicarbonate of Gimelli et al into the invention of WO 96/29894 since both are directed to sauce products, since WO 96/29894 already included the addition of carbon dioxide (page 9, lines 1-9) but simply does not explain how it was achieved, since WO 96/29894 already included acidic ingredients such as wine and citric acid (page 4, lines 26-36), since sodium bicarbonate was well known to produce carbon dioxide in foods, and since Gimelli et al teach that sodium bicarbonate was also an effective PH buffer in sauces in order to provide a neutralized pH of 4-7 (column 3, lines 24-45). Gimelli et al

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections. It would have been obvious to one of ordinary skill in the art to incorporate the sodium bicarbonate of Gimelli et al into the invention of WO 96/29894 since both are directed to sauce products, since WO 96/29894 already included the addition of carbon dioxide

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are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### **Conclusion**

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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*Drew Becker*  
**DREW BECKER**  
**PRIMARY EXAMINER**  
228-06

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